

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Consumers Illinois Water	:	
Company and Oakview Avenue	:	
Water Works, Inc.	:	03-0556
	:	
Petition for Approval of Proposed	:	
Reorganization.	:	

PROPOSED ORDER

By the Commission:

In the instant proceeding, Consumers Illinois Water Company ("CIWC", "Consumers", or "Company") and Oakview Avenue Water Works, Inc. ("Oakview") filed a Joint Petition ("Petition") seeking approval, under Section 7-204 of the Illinois Public Utilities Act (the "Act") (220 ILCS 5/7-204), of the acquisition by CIWC of the assets comprising the water system operated by Oakview pursuant to an Asset Purchase Agreement ("Asset Purchase Agreement" or "Agreement"). CIWC also seeks approval, among other things, of a "Required Plant Surcharge" ("RPS"), estimated to be \$33.20 per month, to take effect upon verification that certain "Required Plant" needed to upgrade the Oakview system is in-service.

Pursuant to due notice, a prehearing conference was held before a duly authorized administrative law judge of the Commission at its offices in Springfield, Illinois on September 30, 2003. Thereafter an evidentiary hearing was held on October 3, 2003. CIWC was represented by counsel and presented the testimony of Thomas J. Bunosky, its Vice President and General Manager. Staff was represented by counsel and presented the testimony of Theresa Ebrey of the Accounting Department, Rochelle Phipps of the Finance Department, William Johnson of the Water Department, and Mike Luth of the Rates Department. At the conclusion of the hearing, this matter was marked "Heard and Taken. A draft order was filed by CIWC on October 21, 2003. On October 31, 2003, a motion was filed by CIWC to clarify the legal description for the area of certification. A proposed order was issued on October 31, 2003.

Background

CIWC is an Illinois corporation and a public utility as defined in the Act. All the common stock of CIWC is owned by Consumers Water Company. All of the common stock of Consumers Water Company is, in turn, owned by Philadelphia Suburban Corporation ("PSC").

CIWC provides water service to approximately 54,780 customers and wastewater service to approximately 10,770 customers in portions of Will County,

Kankakee County, Vermilion County, Boone County, Knox County, Lee County and Lake County in Illinois. One of the areas served by CIWC is the University Park service area in Will County, which has approximately 2,000 residential, commercial and industrial customers.

Oakview is an Illinois corporation and a public utility as defined in the Act. Oakview's stock is owned by Lake Bayou, Inc. Lake Bayou's stock is in turn owned by George Stourton, who is the President of Oakview. Oakview operates a small water system in Joliet Township, Will County, Illinois. Through that system, Oakview provides water service to approximately 111 customers.

Summary of the Terms of, and Reasons for, the Proposed Transaction

The Commission first observes that certain of the proposals for which Commission approval was initially sought in the application were subsequently revised in response to concerns raised and recommendations made by the Commission Staff. Unless otherwise noted, this order discusses the proposals in their current form.

In the instant proceeding, CIWC and Oakview seek approval, pursuant to Section 7-204 of the Act, of the acquisition by CIWC of the assets comprising the water system operated by Oakview pursuant to an "Asset Purchase Agreement." This Agreement was identified as Exhibit A to the petition. Certain of the assets being acquired by CIWC are owned by Oakview and the rest are currently owned by affiliates of Oakview. The net book value of the assets being acquired is \$106,044. Under the terms of the Agreement, CIWC is paying \$30,000 to the sellers. CIWC is also incurring \$55,500 in "acquisition costs", for a total outlay of \$85,500.

Among other things, the petition also seeks approval of the proposed "assumption" by CIWC of Oakview's Certificate of Public Convenience and Necessity, and authorization to CIWC, in connection therewith, to provide water service in the Oakview service area. In order to more accurately reflect the area actually served by Oakview, the legal description of the area that CIWC proposes to serve differs from the area described in the Certificate granted to Oakview in Docket 43677, as explained in a motion filed by CIWC on October 31, 2003. CIWC proposes that the subject area will become part of CIWC's University Park service area.

CIWC also seeks authorization to assess, to the Oakview customers, both of the following charges, pursuant to Section 9-201 of the Act:

- a flat rate of \$18.00/month as is currently charged by Oakview.
- a "Required Plant Surcharge" ("RPS") estimated to be \$33.20 per month to take effect upon verification that certain "Required Plant" needed to upgrade the system is in-service.

CIWC also seeks approval of certain accounting treatment associated with the proposed transactions. CIWC also seeks approval to include, in its University Park-Water Division rate base, the original cost of the assets being acquired pursuant to the Agreement.

According to CIWC, the **reasons** why the parties are proposing that CIWC acquire and operate the Oakview system include those contained in the two paragraphs immediately below:

According to CIWC, it has been requested by the Staff of the Commission, the Illinois Environmental Protection Agency ("IEPA") and the People of the State of Illinois through the Office of the Attorney General of the State of Illinois ("AG"), to acquire and operate the Oakview system due to the alleged poor condition of the system and concerns regarding the public health and safety of the customers served by Oakview. The AG has filed an enforcement action against Oakview in the Circuit Court of the Twelfth Judicial Circuit, Will County, Illinois ("Circuit Court"), seeking that Oakview be directed to take the actions needed to comply with certain environmental laws and regulations, including, but not limited to installation of: (i) a storage tank; and (ii) facilities to provide auxiliary power; and (iii) facilities to provide fluoride to the finished water. These items are referred to as the "Compliance Items".

The Circuit Court entered an Order requiring that Oakview install the Compliance Items. The items have not been installed, and Oakview and Mr. Stourton have been found in willful contempt of court for failing to comply with the court's order. Mr. Stourton was sentenced to jail; and when released Mr. Stourton was ordered to take all actions reasonably necessary to ensure a smooth transition of Oakview to a proposed buyer.

Applicable Authority

The request for approval of the proposed transaction was filed pursuant to **Section 7-204** of the Act. Section 7-204(b) states:

No reorganization shall take place without prior Commission approval. The Commission shall not approve any proposed reorganization if the Commission finds, after notice and hearing, that the reorganization will adversely affect the utility's ability to perform its duties under this Act. In reviewing any proposed reorganization, the Commission must find that:

- (1) the proposed reorganization will not diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service;
- (2) the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers;

(3) costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes;

(4) the proposed reorganization will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;

(5) the utility will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities.

(6) the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction;

(7) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers.

Furthermore, Section 7-204(c) states as follows:

(c) The Commission shall not approve a reorganization without ruling on: (i) the allocation of any savings resulting from the proposed reorganization; and (ii) whether the companies should be allowed to recover any costs incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated.

In addition, Section 7-204A of the Act contains certain requirements for approval of a reorganization under Section 7-204.

CIWC also seeks authorization for certain rate relief under **Section 9-201** of the Act, as noted above and discussed below.

Notice Requirements

Copies of the petition were served on municipalities located within 1.5 miles of the Oakview service area. Notice of the initial hearing in this matter was served on those municipalities.

Notice of the proposed transaction and of the proposed rates to be charged was published twice in a newspaper of general circulation in the Oakview service area. Notice was also posted in the business office of CIWC.

The third paragraph of Section 9-201 of the Act contains additional notice requirements applicable to water and sewer service. That paragraph provides:

When any public utility providing water or sewer service proposes any change in any rate or other charge, or classification, or in any rule, regulation, practice, or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, such utility shall, in addition to the other notice requirements of this Act, provide notice of such change to all customers potentially affected by including a notice and description of such change, and of Commission procedures for intervention, in the first bill sent to each such customer after the filing of the proposed change.

On September 24, 2003, CIWC personnel hand-delivered a notice to the residence of each Oakview customer describing the proposed rate change that would apply to them, and identifying the Commission procedures for intervention.

The Commission finds that the direct written notice provided to the customers was sufficient to substantially comply with the requirements of the third paragraph of Section 9-201 of the Act. In the Commission's opinion, those requirements are applicable to the rate relief sought in this proceeding. Under Section 9-201, rates for water and sewer service simply may not be increased unless the notice requirements in the third paragraph of Section 9-201 are met. The rate relief sought by CIWC would clearly increase the water rates to be paid by the customers currently served by Oakview. Hence, such relief could not be granted pursuant to Section 9-201 absent compliance with the above-referenced notice requirements.

Description of CIWC's Proposal

As indicated above, CIWC states that the **net book value** of the water system assets being acquired pursuant to the Agreement is \$106,044 as shown on CIWC Exhibit J Revised. These assets are listed in Schedule 2.1 of CIWC Exhibit 1.6. Some of the assets being acquired CIWC are owned by Oakview and the rest are currently owned by affiliates of Oakview. CIWC requests that the "original cost of the rate base items" listed in CIWC Exhibit J Revised be reflected in the rate base of its University Park Water Division.

Under the **Purchase Price** terms of the Agreement, CIWC is paying \$30,000 to the sellers. CIWC is also incurring \$55,500 in "acquisition costs", for a total outlay of \$85,500. CIWC Exhibit I (Second Revised) shows CIWC's proposed summary of accounting entries to record the purchase. The difference between the \$85,500 total outlay and the \$106,044 book value of the acquired assets is \$20,544. CIWC proposes to record the \$20,544 amount as a credit acquisition adjustment in Account 114. CIWC proposes to dispose of the Acquisition Adjustment below-the-line as a one-time credit to Account 426. (CIWC Ex. I Second Revised; CIWC Ex. 1.0 at 7)

As noted above, Section 7-204(c) provides in part that “the Commission shall not approve a reorganization without ruling on (i) the allocation of any **[acquisition] savings** resulting from the proposed reorganization; and (ii) whether the companies should be allowed to recover any **costs** incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated.”

According to CIWC, under its current proposal as described above, the acquisition costs incurred by CIWC will be allocated in their entirety to the Company’s shareholders and will not be recovered in rates. (CIWC Ex. 1.0 at 5)

Estimated acquisition savings resulting from the proposed transaction are listed in Exhibit E to the petition. CIWC proposes that “all acquisition savings included in test year data for future rate cases for the University Park-Water Division should be reflected in rates and, thereby, allocated to ratepayers.” (CIWC Ex. 1.0 at 12) CIWC also recommends that it not be required in any future case to measure or quantify Acquisition Savings. (Id.)

As stated above, CIWC also seeks authorization to assess, to the Oakview customers, both of the following **rates and charges**, pursuant to Section 9-201 of the Act:

- a flat rate of \$18.00/month as is currently charged by Oakview. The Oakview customers would not be subject to CIWC’s customer charge and volumetric water rates until after the first rate case for the University Park Division following the closing of the Acquisition
- a “Required Plant Surcharge” (“RPS”) estimated to be \$33.20 per month to take effect upon verification that certain “Required Plant” needed to upgrade the system is in-service.

A detailed discussion of the Company’s proposed Required Plant Surcharge is contained below.

According to Mr. Bunosky, the various rules, regulations, **terms and conditions of service** in the University Park-Water Division would apply to Oakview customers. Mr. Bunosky states that in compliance with the final Order in this case the Company will file revised ILL. C.C. No. 47, Section No. 1, Second Revised Sheet No. 1, which will incorporate the Oakview territory. (CIWC Ex. 1.0 at 11)

CIWC’s Position Regarding 7-204 Requirements

The provisions of Section 7-204(b) are set forth above. With respect to the requirements of Section **7-204(b)(1)**, Mr. Bunosky testified that CIWC will enhance the adequacy, reliability, efficiency and safety of service provided to customers in the Area, with no detriment to CIWC's current customers. He also stated that all aspects of the

water service provided to present customers of Oakview will become the responsibility of CIWC, which has significant resources in Will County and a reputation for providing high quality water service. As customers of CIWC, the former Oakview customers will have access to CIWC's 24-hour customer service telephone line and technicians on call 24-hours per day. The witness said CIWC is committed to providing adequate, efficient, safe and least-cost service, as is demonstrated by its consistent record of quality service. (CIWC Ex. 1.0 at 10-11)

With respect to Section **7-204(b)(2)**, Mr. Bunosky asserts that the proposed transaction will not result in the unjustified subsidization of non-utility activities by CIWC or its customers. According to Mr. Bunosky, at present, neither CIWC nor Oakview engages in a significant level of such activity. (CIWC Ex. 1.0 at 11)

Mr. Bunosky testified that consistent with Section **7-204(b)(3)**, costs and facilities will be fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes. He claims that to the extent that CIWC engages in such activities in the future, it will continue to maintain its books and records in such a manner as to fairly and reasonably allocate utility and non-utility activities, and allow the Commission to identify costs and facilities that are properly included for ratemaking purposes. (CIWC Ex. 1.0 at 11)

As for the requirements of Section **7-204(b)(4)**, Mr. Bunosky asserts that the proposed transaction will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure. He claims that for the Oakview Area, the Acquisition should significantly enhance the Oakview Area's ability to access necessary capital needed for the Compliance Items and other service requirements on reasonable terms. (CIWC Ex. 1.0 at 11)

Mr. Bunosky testified that consistent with Section **7-204(b)(5)** of the Act, CIWC will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities. (CIWC Ex. 1.0 at 12)

Regarding Section **7-204(b)(6)**, Mr. Bunosky testified that due to the geographical separation of their service areas, there is no significant competition for customers and/or water sales between CIWC and Oakview. As a result, Mr. Bunosky concludes that market conditions in Illinois after consummation of the Acquisition will be substantially the same as those currently existing. He concludes, therefore, that the Acquisition is not likely to have a significant adverse effect on competition in Illinois. (CIWC Ex. 1.0 at 12)

In Mr. Bunosky's view, the requirements of **Section 7-204(b)(7)** are satisfied because the Acquisition is not likely to result in any adverse rate impacts on retail customers. (CIWC Ex. 1.0 at 12)

Staff's Position on Issues Discussed Above

Testimony on behalf of the Accounting Department was presented by Ms. Ebrey in ICC Staff Exhibit 1.0. With regard to the **accounting entries** to record the initial purchase of the water system by CIWC, Staff witness Ebrey concurs with the journal entries in CIWC Exhibit I Second Revised. Staff recommends that the Commission order CIWC to file its final Journal Entries with the Commission, providing a copy to the Manager of Accounting, within 30 days of the completion of the purchase of this property. This recommendation is hereby approved.

With regard to the requirements of Section **7-204(b)(2) and 7-204(b)(3)**, Staff witness Ebrey stated that neither CIWC nor Oakview engages in a significant level of non-utility activity. In her view, the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers and meets the requirements of Section 7-204(b)(2) of the Act. (Staff Ex. 1.0 at 4) She further testified that if CIWC engages in non-utility activity in the future, it would continue to maintain its books and records in such a manner as to fairly and reasonably allocate utility and non-utility activity and allow the Commission to identify costs and facilities that are properly included for ratemaking purposes. As a result, Ms. Ebrey testified that the proposed reorganization complies with the standards in Section 7-204(b)(3) of the Act. (Staff Ex. 1.0 at 5)

With respect to the requirements of Section **7-204(c)** of the Act, Ms. Ebrey testified that the costs described by CIWC have been identified in recent Commission Orders as "transactions costs" and have been disallowed from recovery from ratepayers. She agrees with CIWC's "proposed treatment of these 'transaction' costs, to be allocated in their entirety to the Company's shareholders and not recovered in rates." (Staff Ex. 1.0 at 7-8)

Based on its review of the Company's filing, Staff recommends (1) that the Commission, in accordance with Section 7-204(c)(i), order that any cost savings resulting from the reorganization should not increase the revenue requirement in future rate filings, and (2) that the Commission, in accordance with Section 7-204(c)(ii), order that any costs incurred in connection with implementing the proposed reorganization should be included in the acquisition adjustment and be recorded "below the line" in account 426.

Pursuant to Section **7 204(b)(4)** of the Act, the Commission must find that the Acquisition "will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure."

Staff witness Phipps of the Finance Department testified that Oakview's current owner holds all of Oakview's equity and Oakview's only outstanding indebtedness is a short-term loan from an associated company. Following the Acquisition, Oakview will be merged into CIWC's University Park Water Service area and CIWC will raise all of the debt capital for the University Park Water Service area. CIWC's parent company,

Philadelphia Suburban Corporation ("PSC"), will issue equity to the public and the proceeds thereof will be infused as equity into PSC's subsidiaries, including CIWC. (Staff Ex. 2.0 at 4 5)

Ms. Phipps testified that CIWC has access to the capital markets on reasonable terms. Standard & Poor's ("S&P") categorizes debt securities on the basis of the risk that a company will default on its interest or principal payment obligations. She said the resulting credit rating reflects both the operating and financial risks of a utility. S&P rates PSC's subsidiary, Pennsylvania Suburban Water Co. ("PSWC"), 'A+.' S&P states, "The rating on [PSWC] reflects the strength of the consolidated business and financial profiles of the unrated parent, PSC." She stated that according to S&P, an obligor rated 'A' has a strong capacity to meet its financial commitments. (Staff Ex. 2.0 at 5)

Ms. Phipps testified that the Acquisition would not significantly impair Oakview's access to the capital markets. She said the Acquisition could potentially improve Oakview's access to the capital markets due to CIWC's strong financial condition, as evidenced by the published credit rating of its affiliate, PSWC. (Staff Ex. 2.0 at 5)

Section 6-103 of the Act provides that in any reorganization, the Commission shall authorize the amount of capitalization of a public utility formed by a merger, which shall not exceed the fair value of the property involved. (220 ILCS 5/6-103) Ms. Phipps testified, and the Commission agrees, that the Acquisition complies with the requirements of Section 6-103 of the Act since CIWC's capitalization will not change following the Acquisition. (Staff Ex. 2.0 at 3)

The Commission also notes that in Exhibit D attached to the petition, CIWC's "total capital" is listed as \$106,417,077 as of July 31, 2003.

Staff witness Johnson of the Water Department examined the Company's filing to determine whether it met the requirements of Section 7-204 of the Act. Specifically he examined **Subsections 7-204 (b)(1), (b)(5), and (b)(6)**. (Staff Ex. 3.0) Mr. Johnson discussed the many problems purportedly associated with the Oakview system, such as continued low pressure problems, refusal to meet IEPA regulations and timelines, and the lack of providing adequate, reliable, efficient, and safe service to customers.

Mr. Johnson testified that CIWC possesses the ability to provide adequate, reliable, efficient, safe and least-cost public utility service to its customers that will not diminish because of the proposed acquisition, as required by Subsection 7-204(b)(1) of the Act. (Staff Ex. 3.0 at 8) In Mr. Johnson's view, CIWC is a professional and customer-friendly utility, whose facilities have been top quality and well maintained based upon plant tours and inspections with which he has been involved. Mr. Johnson believes that CIWC has high quality water that meets or exceeds regulatory standards. (Staff Ex. 3.0 at 8)

With respect to the requirements of Section 7-204(b)(5), Mr. Johnson stated that CIWC will continue to be under the jurisdiction of the Commission, and will remain

subject to all applicable laws, regulations, rules, decisions, and policies governing the regulation of public utilities. (Staff Ex. 3.0 at 9)

Mr. Johnson agrees with CIWC that due to geographical separation of their service areas, there is no significant competition for customers and/or water sales between CIWC and Oakview. He states that the proposed merger is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction, as required by Subsection 7-204(b)(6) of the Act. (Staff Ex. 3.0 at 9)

Staff witness also Johnson also testified that he has no objection to CIWC's proposal to assume Oakview's certificate of convenience and necessity granted on January 8, 1957 in Docket 43677. (Staff Ex. 3.0 at 9) Mr. Johnson also recommends that the Commission order CIWC to implement the rules, regulations and conditions of service applicable to the University Park Water Division to the Oakview customers. (Staff Ex. 3.0 at 10)

Staff witness Luth of the Rates Department addressed the required finding in Section **7-204(b)(7)** that "the proposed reorganization is not likely to result in any adverse rate impacts on retail customers." (Staff Ex. 4.0) As noted above, CIWC proposes to increase the amount that Oakview customers currently pay for water service, from \$18.00 per month to an estimated \$51.20 per month, as a result of an additional charge which is estimated to be \$33.20 per month and is identified as the Required Plant Surcharge ("RPS").

According to Mr. Luth, given the condition of the Oakview system described above, any owner or operator of the Oakview system would be required to install the required plant. Hence, the proposed acquisition, even including the RPS, is not likely to result in any adverse rate impacts on retail customers within the meaning of Section 7-204(b)(7) of the Act. (Staff Ex. 4.0 at 5)

Commission Conclusions Regarding Issues Discussed Above

As indicated above, Oakview operates a small problem-ridden water system in Joliet Township, Will County, Illinois. Through that system, Oakview provides water service to approximately 111 customers.

Among other things, CIWC and Oakview seek approval in the instant docket, under Section 7-204 of the Act, for the acquisition by CIWC of the assets comprising the water system operated by Oakview pursuant to an "Asset Purchase Agreement". The net book value of the assets being acquired is \$106,044. Under the terms of the Agreement, CIWC is paying \$30,000 to the sellers. CIWC is also incurring \$55,500 in "acquisition costs", for a total outlay of \$85,500. The petition also seeks approval of the proposed "assumption" by CIWC of Oakview's Certificate of Public Convenience and Necessity, and authorization to CIWC, in connection therewith, to provide water service in the Oakview service area.

According to CIWC, it filed the instant petition at the urging of the Staff of the Commission, the IEPA and the AG due to the alleged poor condition of the Oakview system and concerns about the public health and safety of the customers served by that system.

As discussed above, Section 7-204(b) requires that a number of findings must be made before a proposed reorganization may be approved under Section 7-204. The findings required in Section 7-204(b) are set forth above, as are the positions of CIWC and Staff with regard to those criteria. Subject to the conditions and other determinations contained in this Order, the Commission agrees with CIWC and Staff the required findings may reasonably be made based on the record in this docket.

As noted above, Section 7-204(c) provides in part that “the Commission shall not approve a reorganization without ruling on (i) the allocation of any **[acquisition] savings** resulting from the proposed reorganization; and (ii) whether the companies should be allowed to recover any **costs** incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated.” The amounts and proposed treatment of estimated acquisition costs and savings are discussed above.

As recommended by CIWC and Staff, the Commission finds that (a) actual Acquisition Costs incurred by CIWC shall be allocated in their entirety to CIWC’s shareholders, and recorded below-the-line in Account 426 as part of the Acquisition Adjustment; and (b) Acquisition Savings included in test year data for future rate cases for the University Park-Water Division shall be reflected in rates and, thereby, allocated entirely to ratepayers. Further, CIWC should not be required to quantify Acquisition Savings in any future case.

The proposed **accounting entries** to record the initial acquisition of the water system by CIWC are described above. Under the terms of the Agreement, CIWC is paying \$30,000 to the sellers. CIWC is also incurring \$55,500 in “acquisition costs”, for a total outlay of \$85,500. CIWC Exhibit I Second Revised shows CIWC’s proposed summary accounting entries to record the purchase. The difference between the \$85,500 total outlay and the \$106,044 book value of the acquired assets is \$20,544. CIWC proposes to record the \$20,544 amount as a credit acquisition adjustment in Account 114. CIWC proposes to dispose of the Acquisition Adjustment below-the-line as a one-time credit to Account 426. (CIWC Ex. I Second Revised) Staff witness Ebrey concurs with the journal entries in CIWC Exhibit I Second Revised.

The Commission finds that an Acquisition Adjustment in the estimated amount of \$20,544, which is the difference between the estimated outlay of \$85,500 and the net original cost of the assets being acquired, shall be recorded in Account 114, upon the closing of the Acquisition. The instructions for Account 114 of the USOA provide that the amount recorded in that account “shall be amortized, or otherwise disposed of, as the Commission may approve or direct.” The Commission approves disposition of the Acquisition Adjustment as a one-time credit to Account 426, as recommended by the parties.

As further recommended by Staff, CIWC shall file its final Journal Entries with the Commission, providing a copy to the Manager of Accounting, within 30 days of the completion of the purchase of this property.

As discussed above, CIWC also proposes that the **original cost** of the Oakview system assets being acquired pursuant to the Agreement, as listed in CIWC Exhibit J Revised, be recorded in the applicable plant accounts. CIWC also proposes that these items be included in the Rate Base of the University Park-Water Division at the time of its next rate proceeding. Certain of the assets being acquired by CIWC are owned by Oakview and the rest are currently owned by affiliates of Oakview. Staff concurs in this recommendation.

The Commission agrees that the original cost of the Oakview system assets being acquired pursuant to the Agreement, as listed in CIWC Exhibit J Revised, shall be recorded in the applicable plant accounts, and that these items should be included in the Rate Base of the University Park-Water Division at the time of its next rate proceeding.

As noted above, the petition also seeks approval of the proposed “assumption” by CIWC of Oakview’s **Certificate** of Public Convenience and Necessity, and authorization to CIWC, in connection therewith, to provide water service in the Oakview service area. CIWC proposes that the area presently served by Oakview will become part of CIWC’s University Park service area, and as such will become subject to the terms and conditions of service applicable thereto. Staff concurs in these proposals.

In order to more accurately reflect the area actually served by Oakview, CIWC asserts that the legal description of the area which CIWC proposes to serve differs from the area described in the Certificate granted to Oakview in Docket 43677, as explained in a motion filed October 30, 2003. The requested area is described in CIWC Exhibit 1.10 late-filed which is attached to that motion.

The Commission finds that CIWC should be authorized to serve the area identified in CIWC Exhibit 1.10 late-filed, and this area will become part of CIWC’s University Park service area.

Required Plant Surcharge

As discussed above, CIWC also seeks authorization to assess, to the Oakview customers, both of the following **rates and charges**, pursuant to Section 9-201 of the Act:

- a flat rate of \$18.00/month as is currently charged by Oakview.
- a “**Required Plant Surcharge**” (“RPS”) estimated to be \$33.20 per month to take effect upon verification that certain “Required Plant” needed to upgrade the system is in-service.

The Required Plant Surcharge is intended to provide a return of and on CIWC's actual investment in new "Required Plant." The "Required Plant List" was identified as CIWC Exhibit 1.1. It lists estimated costs of \$141,500 for "Compliance Items" and \$159,250 for "Other Required Plant Improvements", totaling \$300,750. CIWC says the Compliance Items are the facilities that are necessary for installation of the items that were required by the Circuit Court's order. The Other Required Plant Improvements are the other upgrades deemed necessary by CIWC to provide adequate service to the Oakview service area. As shown in an "Anticipated Schedule" identified as Attachment 2 to the response to data request WRJ 1.00, CIWC estimates that construction of the Required Plant items will begin in March 2004 and will be completed by August 31, 2004. (CIWC Ex. 1.5)

The language for CIWC's proposed RPS tariff is shown in CIWC Exhibit 1.3 Revised. Under CIWC's proposal, the monthly surcharge would take effect after verification by the Commission Staff that the Required Plant is in service, such verification to be provided within 10 working days after submission by CIWC of a written request for verification together with a spreadsheet calculating the RPS as well as copies of documentation supporting the total cost.

The calculation of the estimated monthly surcharge amount of \$33.20 is set forth in CIWC Exhibit G Revised. The RPS is intended to fund the Required Plant Cost and associated carrying costs over the 10-year period following the effective date of the RPS. Under CIWC's proposal, the carrying costs will initially be calculated using the last allowed "water rate of return" at the time that the RPS is filed. For the period the RPS is in effect, the allowed rate of return would thereafter be updated to reflect each subsequent revision in the Commission-authorized rate of return for the University Park Water Division. (CIWC Ex. 1.0 at 8)

CIWC proposes that amounts collected through the RPS be recorded as contributions in aid of construction. The proposed accounting entries for the RPS are set forth in the Company's revised response to Staff Data Request TEE-003. (CIWC Ex. 1.5)

Under the Company's proposal, the continuation of the RPS for Oakview customers would be considered in the next University Park Water Division rate docket, but only if the cost of the Required Plant is reflected in rate base. (CIWC Ex. 1.0 at 8) According to CIWC, if the Commission determines that the cost of the improvements being recovered through the RPS should be kept separate from other Plant-in-Service amounts that will be part of the revenue requirement in the next University Park Water Division rate docket, then the RPS should be continued. However, if the Commission determines that the cost of the improvements being recovered through the RPS should be included with the costs of other Plant-in-Service that will be part of the revenue requirement in the next University Park Water Division rate docket, then, under CIWC's proposal, the RPS should not be continued. (CIWC Ex. 1.0 at 8-9)

In support of the proposed 10-year period for the RPS, Mr. Bunosky claims it represents a time period for the determination of the amount of the RPS, rather than a specific time period that the RPS is required to run. He also says the 10-year RPS period represents the potential maximum length of time for the RPS to remain in effect. In Mr. Bunosky's view, a 10-year period for the determination of the RPS balances a reasonable monthly amount for Oakview customers to pay for required improvements, with a manageable potential maximum length of time for the RPS to be in effect. (CIWC Ex. 1.0 at 9-10)

In its current form, the Company's RPS proposal reflects certain changes made in response to concerns raised by the **Commission Staff**. The Staff supports approval of the RPS as is currently proposed by CIWC.

Staff witness Ms. Ebrey reviewed the calculation of the RPS and the associated journal entries proposed by CIWC to record the Required Plant and RPS collections as presented on the Attachment to Revised TEE-003 included in CIWC Exhibit 1.5. Ms. Ebrey agreed with the proposed journal entries and does not take issue with the methodology for calculating the RPS. Staff recommends that when the Required Plant is in service, the Company should provide the calculation, including all supporting documentation, to the Manager of Accounting for verification prior to the implementation of the RPS.

As noted above, Staff witness Luth testified that given the situation at Oakview, any owner or operator of the Oakview system would be required to install the required plant. Hence, in his view, the proposed acquisition, even including the RPS, is not likely to result in any adverse rate impacts on retail customers within the meaning of Section 7-204(b)(7) of the Act. (Staff Ex. 4.0 at 5)

Commission Conclusions on the RPS

The purpose and design of the proposed Required Plant Surcharge is discussed in some detail above and will not be repeated here. As noted above, CIWC is seeking approval of its RPS proposal pursuant to the traditional ratemaking provisions of the Public Utilities Act in Section 9-201.

While the Commission has some concerns about the proposed Required Plant Surcharge, the Commission also realizes that the RPS does provide a mechanism for facilitating the construction of the plant improvements needed to correct the dire condition of the Oakview system. Thus, to address the serious problems at Oakview and to assist in obtaining a safe and adequate supply of water for Oakview customers, the Commission approves the implementation of the RPS, subject to the terms and conditions described above and those set forth below.

First, CIWC will be authorized to file a tariff that provides for the implementation of the Required Plant Surcharge mechanism. In that regard, the draft tariff presented as CIWC Exhibit 1.3 Revised shall be modified to incorporate the determinations below. The effective date of the tariff shall be at least five days after the date it is filed.

After the Required Plant is in service, CIWC is authorized to file a notice of written request for verification of Required Plant with the Chief Clerk of the Commission. At the same time, CIWC shall provide to Staff a copy of the written request for verification, and shall also provide to Staff a spreadsheet calculating the RPS as well as copies of documentation supporting the total cost. Within 10 business days after receiving CIWC's written request for verification, Staff shall file a written verification with the Chief Clerk of the Commission indicating whether, or to what extent, the plant inputs in the RPS calculation are "Required Plant" as described above; indicating whether, or to what extent, such Required Plant is in service; and indicating whether, or to what extent, the RPS plant cost inputs represent actual costs. Staff shall serve a copy of the verification filing on CIWC.

The RPS shall be calculated using the methodology shown in CIWC Exhibit G Revised. The RPS tariff shall set forth this methodology in the form of a formula. Initially, the carrying cost component of the RPS will be calculated using CIWC's last-allowed water rate of return, as of the time that the RPS is filed. After receipt of the verification from Staff, and at least five days prior to the date that the specific RPS surcharge takes effect, CIWC shall file an informational sheet with the Chief Clerk of the Commission specifying the exact monthly RPS charge and the effective date thereof. Based on a present case estimate of Required Plant Costs of \$300,750, the monthly amount of the RPS would be \$33.20, as shown in CIWC Exhibit G Revised.

The RPS ultimately made effective shall be based on the actual cost of Required Plant; however, the total amount of Required Plant costs to be recovered through the RPS shall not exceed the estimated amount of \$300,750, unless authorization to do so is granted in a future rate proceeding. No party has indicated by what authority the Commission may set rates in this docket to recover an open-ended amount of plant additions in excess of the amount forecasted.

After the RPS is filed and until the RPS is no longer in effect, the rate of return will be updated to reflect each subsequent Commission authorized rate of return for the University Park Water Division.

Except as otherwise indicated below, the RPS will remain in effect until the Plant Capital Cost is fully recovered, said recovery period not to exceed 120 months, unless the Commission determines, in a subsequent University Park Water Division rate case, that the cost of the improvements at Oakview covered by the RPS should be included in the revenue requirement with the costs of other Plant-in-Service.

The Commission does not reach questions regarding whether the prudence of the amounts actually expended by CIWC on so-called Required Plant items being recovered through the RPS, or any prospective changes in RPS or rate base balances resulting from a review thereof, will be considered in a future rate proceeding, and the conclusions in this Order create no presumptions with respect thereto.

Findings and Ordering Paragraphs

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (2) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (3) the Asset Purchase Agreement should be approved, subject to the conditions set forth herein;
- (4) the Commission finds, within the meaning of Section 7-204(b), that (1) the Reorganization will not diminish CIWC's ability to provide adequate, reliable, efficient, safe and least-cost public utility service; (2) the reorganization will not result in any unjustified subsidization of non-utility activities by CIWC; (3) costs and facilities are fairly and reasonably allocated between utility and any non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by CIWC for ratemaking purposes; (4) the Reorganization will not significantly impair CIWC's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure; (5) CIWC will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities; (6) the Reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction; and (7) the Reorganization is not likely to result in any adverse rate impacts on retail customers;
- (5) after the closing, CIWC's capitalization will be consistent with the requirements of Section 6-103 of the Act;

IT IS THEREFORE ORDERED by the Commission that the Asset Purchase Agreement is hereby approved, subject to the conditions set forth herein.

IT IS FURTHER ORDERED that as of the effective date of the tariffs containing terms and conditions of service as described below, CIWC shall provide water service to the area currently served by Oakview, and is hereby issued a Certificate of Public Convenience and Necessity as follows:

Certificate of Public Convenience and Necessity

It is hereby certified that Consumers Illinois Water Company is granted a Certificate of Public Convenience and Necessity for the construction, operation

and maintenance of a public utility water system in the following area in Will County, Illinois, and the provision of public utility water service in connection therewith:

The East half of Section 14, Township 35 North, Range 10 East of the 3rd Principle Meridian, in Will County, Illinois.

IT IS FURTHER ORDERED that on the effective date of the tariffs described in the ordering paragraph immediately below, Oakview is authorized to discontinue and abandon the public utility business it presently provides; the Certificate of Public Convenience and Necessity issued to Oakview in Docket 43677 is cancelled as of that date.

IT IS FURTHER ORDERED that CIWC shall file tariffs that make applicable, to the area certificated herein, the Rules, Regulations and Condition of Service currently applicable to CIWC's University Park Water Division, said tariffs to reflect an effective date at least two working days after the date of filing; this effective date may not precede the date of closing of the Asset Purchase Agreement.

IT IS FURTHER ORDERED that CIWC shall file tariffs that assess, to customers in the area certificated herein, the same flat monthly charge as is currently charged by Oakview, said tariffs to reflect an effective date at least two working days after the date of filing; this effective date shall be the same as that described in the ordering paragraph immediately above.

IT IS FURTHER ORDERED that CIWC is authorized to implement an RPS in a manner consistent with the determinations made above, and shall file tariff sheets relative to the RPS that are consistent with the determinations made above.

IT IS FURTHER ORDERED that CIWC shall follow the RPS verification procedures as are found appropriate in the determinations made above.

IT IS FURTHER ORDERED that CIWC is authorized to make the accounting journal entries as are found appropriate in the determinations made above.

IT IS FURTHER ORDERED that CIWC and Oakview are authorized to perform such other actions or transactions as are necessary to carry out the actions authorized herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Illinois Administrative Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By proposed order this 31st day of October, 2003.

Administrative Law Judge